

CHAPTER 12: IMPLEMENTING THE SUBREGIONAL CONSERVATION STRATEGY: FUNDING AND FINANCING OF THE HABITAT RESERVE MANAGEMENT AND MONITORING PROGRAM

SECTION 12.1 INTRODUCTION

Chapter 12 addresses the funding resources that have been identified to assure implementation of the NCCP/MSAA/HCP consistent with the provisions of the Implementation Agreement (“IA”) and applicable state and federal requirements. Because the entire proposed Habitat Reserve will be assembled by the Participating Landowners at no cost to the public or public agencies, the funding provisions focus on funding needed to implement the HRMP, the associated Participating Landowner responsibilities, and levels and timing of required funding including: (i) the conduct of construction-based Covered Activities and the associated/phased inclusion of lands within the Habitat Reserve; (ii) the level of OMP and AMP measures that are provided for during the life of the program in connection with achieving HRMP goals; (iii) the ongoing levels of monitoring that will be conducted on the individual and collective Habitat Reserve lands during the term of the NCCP/MSAA/HCP; and (iv) the provision of sufficient endowment funding to permit the continuation of management, monitoring and administration activities beyond the term of the NCCP/MSAA/HCP (*i.e.*, in perpetuity). *Chapter 12* is organized as follows:

- *Section 12.2* provides an overview of the estimated costs associated with implementation of the HRMP that is based on the detailed cost estimates for HRMP activities presented in *Section 7.17*.
- *Section 12.3* provides an overview of funding resources for implementation of the HRMP, including committed funding programs that will satisfy the projected financial needs of the HRMP and supplemental and substitute funding resources and programs that are – or may become – available to facilitate implementation of the HRMP.
- *Section 12.4* addresses the distribution of remaining HRMP endowment funds in the event of early termination of the NCCP/MSAA/HCP.
- *Section 12.5* addresses the Participating Landowners’ mitigation obligations for impacts resulting from Covered Activities, and the funding resources identified to cover the costs associated with implementing said mitigation obligations.
- *Section 12.6* discusses the anticipated costs and funding for RMV’s ongoing management measures (*i.e.*, Interim Management Plan).

SECTION 12.2 SUMMARY OF PROJECTED HRMP IMPLEMENTATION COSTS

As discussed in *Chapter 7*, the HRMP is comprised of two major elements, namely: (i) the Ongoing Management Program (OMP) that is applicable to all of the County parklands and (ii) the Adaptive Management Program (AMP) that will be implemented within portions of the County parklands and RMV Habitat Reserve Lands. The following sections address the projected costs associated with conducting OMP and AMP activities upon the identified portions of the Habitat Reserve.

12.2.1 Ongoing Management Program Costs

As more particularly described in *Section 7.1.1* of this NCCP/MSAA/HCP, the OMP represents the collective management methods, practices and controls currently utilized by the County Department of Harbors, Beaches and Parks (HBP) on the three County wilderness and regional parkland areas (totaling approximately 11,950 acres) that will be enrolled into the Habitat Reserve. As addressed in *Section 7.17*, County presently budgets and expends approximately \$1.49 million annually for operation and management of the three parkland areas. Projections indicate that the same level of funding (adjusted for inflation) will be sufficient to provide and accomplish continued operation and management functions upon County Habitat Reserve Lands during the term of the NCCP/MSAA/HCP. In accordance with historical practice, County will continue to cover the costs associated with the conduct of OMP activities on County Habitat Reserve Lands through County's annual budget process.

12.2.2 County Parkland Adaptive Management Program Costs

In conjunction with OMP activities, County has historically conducted habitat management activities within the three wilderness and regional parkland areas identified for enrollment into the Habitat Reserve. County intends to continue the performance of specific AMP activities upon portions of the enrolled County parkland areas during the term of the NCCP/MSAA/HCP. As identified in *Section 7.17*, County presently expends approximately one-third (1/3) of its annual \$1.49 million parkland operating budget (or, approximately \$500,000) for the conduct of management activities that benefit species and Conserved Vegetation Communities within the three parkland areas. This level of annual expense for the conduct of management activities (adjusted for inflation) is anticipated to continue through the term of the NCCP/MSAA/HCP. Said AMP expenses will be satisfied through the annual County budget process.

Under the proposed NCCP/MSAA/HCP, supplemental funding for AMP activities within County Habitat Reserve Lands will be available in the future through (i) application of the opt-in mitigation fee program to be established for the Coto de Caza planned community in Subarea 3; (ii) the RMV AMP for adaptive management measures related to stressors on parklands

identified through the AMP monitoring program that affect Covered Species and conserved Vegetation Communities within RMV Habitat Reserve Lands; and/or (iii) state and federal grant programs. In addition, as mitigation for impacts, mitigation fees associated with the Prima Deshecha Landfill General Development Plan and Avenida La Pata programs will contribute significantly toward the overall HRMP by providing for the eradication of approximately 24.3 acres of *Arundo donax* within the San Juan Creek portion of Caspers Wilderness Park, as depicted in *Part V, Appendix J* (see *Section 12.3* below).

12.2.3 RMV Adaptive Management and Reserve Monitoring Costs

As addressed in *Chapter 7*, the NCCP/MSAA/HCP covers the approximately 20,868 acres of RMV Habitat Reserve Lands that will be adaptively managed by the Reserve Manager in accordance with the provisions and elements of the HRMP. In addition to the conduct of AMP activities upon -- and otherwise for the benefit of -- the RMV Habitat Reserve Lands, the Reserve Manager shall be responsible for the performance of certain monitoring activities throughout the 32,818-acre Habitat Reserve that will facilitate implementation of the HRMP. *Section 7.17* addresses the projected costs associated with implementing these AMP and monitoring elements both during and following the term of the NCCP/MSAA/HCP. Furthermore, *Table 12-1* provides annual cost estimates for the conduct of AMP and monitoring activities during the initial 25 years of the NCCP/MSAA/HCP. Using present value assumptions, these projected AMP and monitoring costs (collectively referred to as “HRMP Expenses”) may be summarized as follows:

TABLE 12-1
Estimated Annual HRMP Expenses - Years 2007 through 2031
(Present Value / Rounded to Nearest Thousand)

Year(s)	Projected Expenses
2007	\$252,000
2008	197,000
2009	514,000
2010	447,000
2011	558,000
2012	608,000
2013	760,000
2014	491,000
2015	458,000
2016	607,000
2017	635,000
2018	694,000
2019	582,000
2020	493,000
2021	558,000
2022	728,000

TABLE 12-1
Estimated Annual HRMP Expenses - Years 2007 through 2031
(Present Value / Rounded to Nearest Thousand)

Year(s)	Projected Expenses
2023	640,000
2024	469,000
2025	535,000
2026	496,000
2027	658,000
2028	721,000
2029	450,000
2030	469,000
2031	587,000

For Years 2032 through 2081, HRMP Expenses were calculated using the same general assumptions for monitoring and management actions as described in *Part I, Section 7.17*. To account for inclusion of the San Mateo Creek Watershed in the Habitat Reserve in 2032, Vegetation/Wildlife Plots were increased to 85 as noted in *Part I, Section 7.17*. Data Analysis/Report Preparation was correspondingly increased for the same period. Species monitoring was carried forward on the same schedule as the previous 25 years, as was monitoring of Habitat Linkages/Corridors and Other Support Tasks (*e.g.*, MAP preparation, etc.). Beginning in Year 2033, invasive species control for both plant and animal species was reduced to \$50,000 per year on the basis that through the efforts of the previous 25 years of invasive species control (*i.e.*, through implementation of the AMP in the San Juan Creek Watershed, and through RMV's ongoing invasive species control efforts to maintain baseline conditions in the San Mateo Creek Watershed), invasive species levels would require maintenance efforts as opposed to significant active control efforts. Immediate stressor-related AMP actions were maintained at the same levels as the previous 25-years.

Using present value assumptions, projected HRMP Expenses for Years 2032 through 2081 (in ten-year intervals) may be summarized as follows:

TABLE 12-2
Estimated Annual HRMP Expenses – Years 2032 to 2081
(Present Value / Rounded to Nearest Thousand)

Year(s)	Projected Expenses
2032	\$699,000
2041	358,000
2051	396,000
2061	497,000
2071	358,000
2081	496,000

Long-term, inflation-adjusted estimates for HRMP expenses over the life of the NCCP/MSAA/HCP are summarized in *Table 12-3* and compared against income and revenue projections for the same period.

Furthermore, *Table 12-3* reflects projected HRMP Expenses for the two (2) years immediately following the completion of the NCCP/MSAA/HCP term, with figures adjusted to account for the assumed inflation rate of three percent (3percent) per annum. Although precise identification of annual adaptive management and monitoring activities and costs during the post-NCCP/MSAA/HCP period is not practicable, RMV assumes that HRMP activity levels and costs during this post-program period will approximate those occurring and incurred during the final ten (10) years of the NCCP/MSAA/HCP. Average HRMP Expenses during this ten (10) year period approximate \$460,000 per annum (as measured in Year 2007 dollars). As addressed in *Section 12.3.1.c.*, below, the RMV funding program predicts and assumes the availability of \$500,000 per annum to satisfy HRMP Expenses on a non-wasting basis following the conclusion of the NCCP/MSAA/HCP term. Accordingly, aggregate funding resources are projected to exceed anticipated HRMP Expense demands for all years following the termination of the NCCP/MSAA/HCP program.

12.2.4 Reserve Manager Administrative Expenses

As addressed in *Section 7.17*, above, the Reserve Manager will incur certain administrative expenses in connection with the implementation of the HRMP. These expenses include, but are not limited to, salaries and personnel benefits, equipment costs and insurance. Administrative expenses represent a necessary element of the overall HRMP implementation strategy; however, said expenses are treated as a separate item for purposes of *Chapters 7* and *12* and are not combined with other projected HRMP Expenses. See *Table 12-3* (identifying “Administrative Costs” and “HRMP Expenses” as separate cost items under the “Expenditures” section of the Operating Account).

Administrative expenses for the Reserve Manager (hereafter “Administrative Costs”) are projected at (i) \$50,000 per annum (present value) for Years 2007 and 2008; (ii) \$75,000 per annum (present value) for Years 2009 and 2010; and (iii) \$100,00 per annum (present value) over the remaining life of the NCCP/MSAA/HCP (*i.e.*, Year 2011 through 2081). Following the completion of the NCCP/MSAA/HCP term, the Reserve Manager will continue to incur Administrative Costs as HRMP activities are conducted on (and for the benefit of) the Habitat Reserve Lands on a perpetual basis. The parties anticipate that Administrative Costs during the post-NCCP/MSAA/HCP period will approximate those incurred during the final years of the NCCP/MSAA/HCP program (*i.e.*, \$100,000 per annum [present value]). The RMV funding program predicts and assumes the availability of \$100,000 per annum to satisfy anticipated

Administrative Costs on a non-wasting basis following the conclusion of the NCCP/MSAA/HCP term (see *Section 12.3.1.c* below).

Both during and following the term of the NCCP/MSAA/HRMP, Administrative Costs will be satisfied exclusively through Habitat Reserve funding received and maintained by RMVLC (see *Section 12.3.1* below).

SECTION 12.3 FUNDING RESOURCES FOR IMPLEMENTATION OF THE HRMP

Consistent with the mandates of FESA and the NCCP Act, specific programs and resources have been identified that will generate sufficient funding for implementation of the HRMP. *Section 12.3.1* identifies the known and expected funding programs and resources that will be available to (i) satisfy identified HRMP Expenses and Administrative Costs over the life of the NCCP/MSAA/HCP (ii) provide sufficient endowment resources to continue HRMP activities -- on a perpetual basis -- at expense levels consistent those incurred during the final ten (10) years of the NCCP/MSAA/HCP period. *Section 12.3.2* addresses funding programs that may supplement existing and future County budget resources in the performance of AMP activities upon County parkland areas enrolled into the Habitat Reserve. Finally, *Section 12.3.3* describes supplemental and substitute funding programs and resources that are (or may become) available to augment identified HRMP resources in the future, but which resources/programs are not necessary or otherwise required for successful implementation of the HRMP.

12.3.1 HRMP Funding Resources and Programs

a. Fund Management -- HRMP Accounts

Three (3) categories of account will be established and maintained by RMVLC to facilitate management and distribution of HRMP funds collected during and after the term of the NCCP/MSAA/HCP, namely:

- Operating Account – Serving as the working account for RMVLC, all HRMP income and expense activity shall be tracked and processed through the Operating Account. The Operating Account shall have a working deposit balance of \$100,000 (present value), and shall be maintained at a FDIC insured institution with a presumed money market rate of interest of three percent (3 percent) per annum on unexpended funds. Amounts in excess of the working deposit balance shall be transferred -- not less than annually -- to the Endowment Fund (see below).

- Changed Circumstances Account – As discussed in Section 12.3.1.b., below, a portion of each Benefit Fee collected upon the sale of a new residential unit with the Ranch Plan project area shall be paid into a separate account (the “Changed Circumstances Account”) and maintained for the purpose of addressing extraordinary AMP actions and expenditures not otherwise budgeted during or after the term of the NCCP/MSAA/HCP. Funds deposited into the Changed Circumstances Account shall be invested in municipal bonds or similar investment grade products with a presumed rate of return of five and nine-tenths percent (5.9 percent) per annum. At such time as the Changed Circumstances Account reaches a balance of \$2 million, a portion of the annual investment income shall be transferred to the Endowment Account on an ongoing basis (see below). Specifically, all amounts of annual investment income that exceed the presumed inflation rate of three percent (3.0 percent) per annum shall be transferred to the Endowment Account. Based upon the assumed rate of return of five and nine-tenths percent (5.9 percent), approximately two and nine-tenths percent (2.9 percent) of the annual return earned on the Changed Circumstances Account should be available for transfer to the Endowment Fund.
- Endowment Account – All unused Operating Account funds and all excess investment income earned on the Changed Circumstances Account shall be transferred to the Endowment Account for the purpose of establishing a fund of sufficient size to accommodate HRMP Expenses and Administrative Costs incurred during and after the term of the NCCP/MSAA/HCP. Consistent with the investment parameters established for the Changed Circumstances Account, funds deposited into the Endowment Account shall be invested in municipal bonds or similar investment grade products with a presumed rate of return of five and nine-tenths percent (5.9 percent) per annum. As discussed in Section 12.3.1.c, below, the Endowment Account is projected to contain approximately \$196 million at the conclusion of the NCCP/MSAA/HCP term, with sufficient inflation-adjusted income to satisfy assumed, perpetual HRMP Expenses and Administrative Costs.

b. Committed Resources and Programs

As more particularly prescribed in Part III (*i.e.*, the IA), specific funding resources and programs shall be provided or otherwise established to cover projected HRMP Expenses and Administrative Costs incurred during the term of the NCCP/MSAA/HCP, as well as to provide endowment funds sufficient to cover, on a perpetual basis, assumed levels of HRMP Expense and Administrative Cost incurred following the conclusion of the NCCP/MSAA/HCP term. To date, the following funding resources and programs have been identified to satisfy the collective HRMP costs described above:

- ***Ladera Land Conservancy Funds***

Upon build-out of the Ladera Planned Community (projected to occur in 2006) and upon completion of the phased open-space dedication program established for Ladera, the Ladera Land Conservancy (LANDCO) will be responsible for the management and preservation of approximately 1,600 acres of open space and habitat area. Under the NCCP/MSAA/HCP, management and monitoring responsibilities for the Ladera open space will be transferred to the Reserve Manager. Concurrent with this transfer of responsibilities, approximately \$700,000 in funding will be provided to RMVLC to facilitate the management of the Ladera open space and to assist in the implementation of the HRMP. As indicated in *Table 12-3*, the LANDCO funding will be provided to RMVLC as a one-time, lump sum payment in Year 2007. RMVLC shall initially deposit the LANDCO funding into the Operating Account, with subsequent transfer of the unused portion of the LANDCO funds to the Endowment Account on or before the conclusion of the Year 2007 fiscal period.

- ***Santa Margarita Water District Mitigation Fees***

SMWD Covered Activities include (i) the operation and maintenance of existing SMWD facilities within the Southern Subregion and (ii) the construction, operation and maintenance of new water storage, treatment and conveyance facilities within the Southern Subregion. As mitigation for impacts to aquatic and upland species/vegetation associated with the development, operation and maintenance of these facilities, SMWD has previously committed to pay \$700,000 in mitigation fees pursuant to the terms of the San Juan Creek/San Mateo Creek Special Area Management Plan (SAMP). SMWD has also agreed to contribute an additional \$3 million in mitigation fees pursuant to the NCCP/MSAA/HCP (see SMWD Staff Report dated January 23, 2006). The combined \$3.7 million in mitigation fees will be generated through SMWD's annual operating budget and will be paid into the HRMP (through RMVLC) in individual installments during the term of the NCCP/MSAA/HCP. Specifically, SMWD shall tender to RMVLC (i) \$350,000 upon SMWD's execution of the IA; and (ii) an additional \$350,000 in Year 2008. The balance of \$3,000,000 will be paid to RMVLC in equal annual installments of \$250,000 each, beginning in Year 2009 and ending in Year 2020, all in accordance with the terms and provisions of the IA. Funds received by RMVLC from SMWD shall be initially deposited into the Operating Account, with subsequent transfer of the unused portions of the SMWD funds to the Endowment Account on or before the conclusion of the relevant fiscal year.

- ***RMV Benefit Fee Program***

Concurrent with the recordation of each irrevocable covenant (IC) granted by RMV and covering a portion of the RMV Habitat Reserve Lands, RMV will establish a program whereby a fee will

be collected for the benefit of RMV's Habitat Reserve Lands ("Benefit Fee") upon the initial sale of any developed residential parcel located within the developable portion of the Ranch Plan area that is associated with the relevant IC phase. For each IC phase, the Benefit Fee obligation will be established through the recordation of a fee agreement that binds and encumbers each residential parcel within the relevant portion of the Ranch Plan project area. Per the recorded fee agreement, the amount of the individual Benefit Fee shall be equal to a fixed percentage of the total consideration identified in the contract for the sale of the residential unit. RMV has committed to the establishment of a Benefit Fee percentage equal to not less than 0.324 percent of the contract consideration price.

At the close of escrow for each sale of a newly constructed residential unit within the Ranch Plan area, the escrow agent employed for the transaction shall calculate and collect the appropriate Benefit Fee. Concurrent with the close of escrow for the transaction, the escrow agent shall remit to RMVLC the Benefit Fee thus collected. All Benefit Fees received by RMVLC shall be allocated as follows:

- 0.314 percent of the contract price (or 96.9 percent of the collected Benefit Fee) shall be paid into the Operating Account, with subsequent transfer of the unused portion of the collected Benefit Fee to the Endowment Account on or before the conclusion of the relevant fiscal year.
- 0.01 percent of the contract price (or 3.1 percent of the collected Benefit Fee) shall be paid into the Changed Circumstances Account and dispersed as necessary to address Changed Circumstances that require extraordinary AMP actions and expenditures not otherwise budgeted during the term of the NCCP/MSAA/HCP. As identified in *Section 12.3.1.a* above, when the Changed Circumstances Account achieves a balance of \$2 million, all annual inflation-adjusted investment income earned on the Changed Circumstances Account will be transferred to the Endowment Account.

As reflected in *Table 12-3* and further discussed in *Section 12.3.1.c.*, below, a Benefit Fee percentage equal to 0.324 percent is projected to generate sufficient monies (when combined with other financial resources) to satisfy projected HRMP Expenses and Administrative Costs over the life of the NCCP/MSAA/HCP, as well as to provide for the creation of a non-wasting endowment fund of sufficient size to allow for perpetual management, monitoring and administrative activities at assumed levels. However, the Benefit Fee percentage is subject to change based upon further analysis of market conditions, the availability of alternative and/or substitute funding programs/resources, anticipated development schedules, and other factors that may bear upon the provision of adequate funding for successful implementation of the HRMP. Notably, implementation of the Benefit Fee program is anticipated to generate more than \$27

million in operational funds during the initial 26 years of the NCCP/MSAA/HCP (*i.e.*, through projected sale of all Ranch Plan area residential units in Year 2032). This figure is conservative insofar as it is based upon (i) sale of only 10,500 assessable units within the Ranch Plan Project area; and (ii) average transaction values that are below historical market rates and trends for development in South Orange County. The figure is also exclusive of the approximately \$2 million in Changed Circumstances Account funding that will be generated and segregated for unbudgeted expenses that may occur during and after the term of the NCCP/MSAA/HCP.

○ ***Accumulating Interest on Existing and Unexpended Funds***

Interest on the revenue collected and invested during the term of the NCCP/MSAA/HCP will provide significant funds for implementation of the HRMP. The majority of this interest income will derive from funds in the Endowment Account, but funds held in the Operating Account and the Changed Circumstances Account will also generate considerable interest. As reflected in *Table 12-3*, the total of interest generated during the 75-year term of the NCCP/MSAA/HCP is projected to be approximately \$325,742,000. This aggregate figure may be segregated by account category as follows:

\$308,612,000 – Endowment Fund (assuming 5.9 percent annual rate of return)
\$ 15,683,000 – Change Circumstances Account (assuming 5.9 percent annual rate of return)
\$ 1,447,000 – Operating Account (assuming 3.0 percent money market annual rate of return)

\$325,742,000 – <i>Total Interest Earned</i>

c. Sufficiency of Funds / Coverage of Projected HRMP Expenses and Administrative Costs

Table 12-3 summarizes the projected HRMP revenues and expenses that will be collected and incurred during the term of the NCCP/MSAA/HCP. Notably, the *Table* provides year-by-year revenue and expense projections for each year of the NCCP/MSAA/HCP in a format consistent with the expense and analysis period utilized in *Chapter 7, Section 7.17* and graphically represented in *Table 7-17*. *Table 12-3* further includes projected expense and revenue figures for the two (2) years immediately following the 75-year term of the NCCP/MSAA/HCP, reflecting, in relevant part, assumed levels of HRMP Expenses (*i.e.*, \$500,000 per annum [present value]) and Administrative Cost (*i.e.*, \$100,000 per annum [present value]) for all years following the expiration of the NCCP/MSAA/HCP.

To promote accuracy in forecasting, *Table 12-3* assumes an annual rate of inflation of three percent (3.0percent). The annualized inflation rate is reflected on *Table 12-3* in a comparative format; namely:

- The first two lines of the “Expenditures” portion of the Operating Account section report projected HRMP Expenses and Administrative Costs (separately) in present value denominations; and
- The third and fourth lines of the “Expenditures” portion of the Operating Account section report projected HRMP Expenses and Administrative Costs (separately) assuming the identified rate of inflation (using Year 2007 as the base year)
- The fifth (and final) line of the “Expenditures” portion of the Operating Account section combines projected HRMP Expenses and Administrative Costs and provides an annual, inflation-adjusted figure for the combined expenses (using Year 2007 as the base year)

As reflected in *Table 12-3*, during the 75-year term of the NCCP/MSAA/HCP while the endowment is being established, the aggregate HRMP funding resources and programs will provide sufficient funding to cover all inflation-adjusted HRMP Expenses and Administrative Costs incurred during the NCCP/MSAA/HCP period. As further shown in *Table 12-3*, during the 75-year term of the NCCP/MSAA/HCP, sufficient funds will be collected to establish a non-wasting Endowment Account of approximately \$196 million at the end of the NCCP/MSAA/HCP period to fund assumed levels of HRMP Expense and Administrative Cost in perpetuity with interest from said Endowment. As identified in Section 12.3.1.a above, the Endowment Account is projected to generate a five and nine-tenths percent (5.9 percent) average annual rate of return, such that two and nine-tenths percent (2.9 percent) of the annual return will be sufficient to fund these assumed, annual HRMP Expenses and Administrative Costs. The remaining 3.0 percent of the return will be reinvested to ensure that the Endowment Account grows annually to offset inflation.

In addition to the Endowment Account, at the conclusion of the 75-year NCCP/MSAA/HCP period, the Changed Circumstances Account is projected to contain approximately \$9.5 million to address situations that may arise following the NCCP/MSAA/HCP term that require extraordinary AMP actions and expenditures. Additionally, the Operating Account is projected to contain approximately \$900,000 at the end of the NCCP/MSAA/HCP term. Thus, in total, more than \$206 million is projected to be available at the conclusion of the 75-year NCCP/MSAA/HCP program to satisfy anticipated AMP, monitoring and administrative expenses arising in the post-NCCP/MSAA/HCP period.

c. Unanticipated Revenue Shortfalls

As identified above, existing and committed funding resources will exceed projected, inflation-adjusted HRMP Expenses and Administrative Costs over the life of the NCCP/MSAA/HCP. Although unlikely, the possibility exists that the provision and/or collection of identified HRMP revenues in accordance with the schedule described in *Table 12-3* could be delayed or modified. For example, changes in prevailing economic conditions could result in postponement of the Ranch Plan development schedule, thereby causing a delay or adjustment in the collection of prescribed Benefit Fees.

In the instance that the collection of Benefit Fees (or other funding resources) is delayed such that successful implementation of the HRMP may be compromised, representatives of RMV, RMVLC, the Reserve Manager, County and SMWD (collectively, the “Conferees”) shall meet and confer relative to the preparation of an interim five-year budget/program that (i) projects annual revenues and anticipated HRMP Expenses and Administrative Costs for the interim period and (ii) identifies, with particularity, supplemental and/or substitute funding programs that will provide sufficient resources to satisfy projected HRMP Expenses and Administrative Costs. During the term of the interim budget period, the Conferees shall meet not less frequently than annually to address the status of the interim budget and the provision of adequate funding. As appropriate, the Conferees shall modify the budget and/or identify supplemental or substitute funding programs to accomplish HRMP requirements established for the interim budget period.

By virtue of the preparation, implementation and periodic review of the interim budget program, the effects of any unanticipated revenue shortfalls will be fully and adequately resolved.

12.3.2 County Habitat Reserve Lands – Supplemental Funding Resources

a. Identified Supplemental Resources for AMP Activities

For AMP activities conducted upon, or in relation to, County Habitat Reserve Lands (*e.g.*, giant reed eradication and control), supplemental funding may be generated from the following resources/programs:

- ***Habitat Loss Mitigation Fee Payments / Coto de Caza***

Approximately 17 undeveloped homesites remain with the Coto de Caza planned community. Development of these homesites may impact Conserved Vegetation Communities located within the bounds of the individual lots. As mitigation for said potential impacts, County intends to implement an “opt in” program that would allow the owners of the remaining undeveloped

residential lots in Coto de Caza to either (A) mitigate for impacts to Conserved Vegetation communities on their lands onsite or (B) pay a mitigation fee to County to be used for adaptive management of the County parklands within the Habitat Reserve. The mitigation fee program would generate a fee of \$64,000¹ for each acre of Conserved Vegetation community impacted, with a 2:1 mitigation fee ratio for such lands occupied by Covered Species. Assuming full lot owner participation in the mitigation fee program (as opposed to onsite mitigation) and a minimum area of impact of one acre per homesite, the opt in program would generate between \$1.09 million and \$2.18 million in fees for the conduct of adaptive management upon County parklands enrolled into the Habitat Reserve. All funds generated through the mitigation fee program will be accumulated by County as segregated funds for establishment of a non-wasting endowment to fund adaptive management on County Habitat Reserve Lands.

- ***RMV AMP Funds***

Supplemental adaptive management activities within the County parklands may funded by the RMV AMP when such adaptive management activities (*i.e.*, invasive species controls and fire management) contribute to the overall health of the Habitat Reserve where the Science Panel has determined that these stressors can cause loss of habitat value within the County parklands and where conditions in the County parklands can adversely affect RMV Habitat Reserve Lands.

- ***Mitigation Fees -- Prima Deshecha Landfill General Development Plan and Avenida La Pata***

As part of the implementation programs for (A) the proposed Prima Deshecha Landfill General Development Plan ("Prima Deshecha Landfill GDP") and (B) the anticipated improvements to/extension of Avenida La Pata southerly of Ortega Highway, County will contribute \$600,000 in funding to mitigate impacts to aquatic areas and species associated with said development programs. The funding will contribute significantly toward the overall HRMP by providing for the eradication of invasive plant species with a focus on approximately 24.3 acres of giant reed within the San Juan Creek portion of Caspers Wilderness Park as depicted in *Appendix J*. County shall pay the in-lieu mitigation fee to RMVLC in equal annual installments of \$100,000 beginning in Year 2007 and continuing thereafter through Year 2012, all in accordance with the provisions and conditions set forth in the IA.

¹ The base \$64,000 fee will be adjusted annually by County to reflect the changing value of mitigation lands in the subregion during the term of the NCCP/MSAA/HCP.

b. Sufficiency of Funds / County Habitat Reserve Lands

The collective funding resources available to County (*i.e.*, opt-in Coto de Caza mitigation funds, RMV AMP funding, Prima Deshecha Landfill and Avenida La Pata extension mitigation funds, and annual County budget process(es)) are sufficient to accommodate the continuation and implementation of both OMP and AMP activities upon the County Habitat Reserve Lands during the term of the NCCP/MSAA/HCP. No additional funding resources or programs are required.

12.3.3 Supplemental and Alternative Funding Resources/Programs

In addition to the funding resources identified in *Sections 12.3.1* and *12.3.2*, above, other funding resources may be (or otherwise become) available during the term of the NCCP/MSAA/HCP to facilitate and/or improve implementation of the HRMP. Although unnecessary for purposes of achieving successful implementation of the HRMP, these supplemental and alternative funding resources/programs are important vis-à-vis preserving flexibility and opportunity in the promotion of near-term and long-term funding strategies that may augment or otherwise improve committed resources and the delivery thereof.

- ***Supplemental “Start-Up” Funding Sources***

Several federal and state programs have been established to assist in the protection and preservation of species and habitat. In addition to providing acquisition funding, these programs are available to assist in direct restoration, improvement and management activities. Depending upon availability, the following resources and programs, among others, could provide additional funding to assist in implementation of the HRMP strategy:

- ***Proposition 40*** – In March 2002, California voters approved the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act (“Prop 40”) which, in relevant part, allocated \$300 million in bond proceeds to the State Wildlife Conservation Board (“WCB”) for use in acquiring and restoring wildlife habitat areas.
- ***Proposition 50*** – As approved by California voters in November 2002, the Water Security, Clean Drinking Water, Coastal and Beach Protection Act (“Prop 50”) allocated an additional \$940 million in bond proceeds to WCB for use in the acquisition, protection and restoration of wetlands and watershed areas.
- ***Other Bond Proceeds*** – Since 1980, California voters have approved the issuance of approximately \$3.8 billion in general obligation bonds to provide funding for

the purchase, protection and improvement of recreational areas (e.g., parks and beaches), cultural areas (such as historic buildings and museums) and natural areas (e.g., wilderness and open-space areas, trails, wildlife habitat and the coast). Said amount is in addition to the approximately \$1.24 billion approved pursuant to Prop 40 and Prop 50. The purposes thus ascribed for these preservation bond funds are consistent with the purposes and goals of the NCCP/MSAA/HCP Conservation Strategy.

- ***NCCP Local Assistance Grants*** -- The California Department of Fish & Game offers grants to public and non-profit entities for urgent tasks associated with implementation of approved NCCPs, or NCCPs anticipated to be approved within 12 months of grant application. Annual funding for these competitive grants to NCCP-participating entities is determined by the Legislature, and has ranged from \$599,000 to \$1.6 million per year.
- ***Federal Programs*** – Several federal agencies/departments have created programs designed to facilitate and promote species and habitat conservation. For example, the Private Stewardship Grants Program (established by the Department of the Interior) provides federal grants on a competitive basis to individuals and groups engaged in voluntary conservation efforts on private lands that benefit federally listed endangered or threatened species, candidate species or other at-risk species. Additionally, the Landowner Incentive Program (administered by USFWS) provides funding to private landowners interested in conserving natural habitat for species at risk while continuing to engage in traditional land-use practices. These (and other) federal programs may be available to assist in implementing the HRMP strategy.
- ***Other Potential Funding Concepts and Programs***

The potential may exist for establishing other assessment and fee programs for the benefit of the Habitat Reserve lands; for example:

- ***Habitat Maintenance Assessment District*** -- In accordance with the provisions of Fish & Game Code Sections 2900 *et seq.* and Government Code Sections 50060 *et seq.*, the County could establish a habitat maintenance assessment district (HMAD) for the improvement and long-term maintenance of lands within the Habitat Reserve. Pursuant to the HMAD program, landowners within the district would pay an annual fee toward preservation and maintenance of the Habitat Reserve subject to the statutory cap of \$25.00 per annum.

- ***Community Facilities District*** -- Pursuant to Government Code Section 53313(d), a legislative body may establish a community facilities district (“CFD”) to finance the maintenance of parks, parkways, and open space with the district. The County and RMV could explore the establishment of a CFD to assist in the long-term maintenance of the Habitat Reserve Lands and accomplishment of the HRMP strategy.
 - ***County Service Area*** – Government Code Sections 25210.1 *et seq.* authorize the establishment of special districts to provide extended government services within unincorporated county areas. Known as “county service areas” (or “CSAs”), these special districts represent an alternative method for obtaining and securing necessary governmental services and provide for the levy of taxes within the designated CSA in an amount sufficient to pay for the extended services provided/secured. Per Government Code Section 25210.4(c), a CSA may be established to provide local park, recreation or parkway facilities and services within the boundaries of the CSA.
 - ***Community Services District*** -- Similar to CSAs, community services districts (CSDs) are intended to provide additional flexibility and alternatives vis-à-vis the provision of public services. Government Code Section 61100 specifically enumerates the purposes for which CSDs may be established; notably, Section 61100(e) provides, in relevant part, that a CSD may be created to acquire, construct, improve, maintain, and operate recreation facilities, including, but not limited to, parks and open space.
- ***Substitute Funding Programs***

In order to (i) provide RMV with appropriate and necessary flexibility in coordinating implementation of the Ranch Plan; and (ii) promote opportunities for improving and/or securing long-term funding for the benefit of RMV's Habitat Reserve Lands and implementation of the HRMP, RMV shall have the right, but not the obligation, to identify and/or establish substitute funding programs that will modify or replace the Benefit Fee program and any other funding program(s) implemented by RMV. RMV's right to identify and/or establish substitute funding program(s) shall be conditioned upon the following:

- a. The substitute program(s), when combined with the LANDCO funds, SMWD contributions and other funds available to RMVLC, must generate or otherwise result in the provision of funding in amounts which are commensurate with the projected funding requirements of the HRMP.

- b. The substitute program(s) must contain provisions for enforceability, management and administration that are, at a minimum, equivalent to those provisions established for the program(s) that is/are being modified or replaced.
- c. Adoption and implementation of the substitute program(s) must not impede or otherwise hinder the HRMP and on-going adaptive management activities.

In the instance that RMV identifies or otherwise establishes alternative funds or programs that satisfy the conditions described above, RMV may proceed to modify or terminate the Benefit Fee program or any other funding program established by RMV following (i) prior written notice to County and the Wildlife Agencies concerning the intended modification or termination (with a description of the proposed alternative funds and/or funding programs and how said funds/funding programs satisfy the above conditions); (ii) consultation with County and the Wildlife Agencies (if requested by County and/or the Wildlife Agencies within 30 days following receipt of RMV's written notice); and (iii) consideration and, as appropriate, incorporation of changes into the substitute program(s) that are deemed reasonable and necessary by RMV to preserve long-term funding for the HRMP.

SECTION 12.4 DISTRIBUTION OF REMAINING NCCP/MSAA/HCP FUNDS IN THE EVENT OF EARLY PROGRAM TERMINATION

The proposed term of the NCCP/MSAA/HCP is 75 years, and the Participants fully intend and expect that the program will run to completion. Notwithstanding, the possibility exists that the Subregional NCCP/MSAA/HCP could be terminated prior to the 75-year expiration date, and that HRMP funds will have been collected and unallocated at the time of early termination. Accordingly, provision must be made for allocation and distribution of all collected and unexpended HRMP funds in the event that the NCCP/MSAA/HCP is terminated prior to the full 75-year term.

As reflected in the Implementation Agreement, the Participants have agreed that any and all unallocated and unexpended HRMP funds remaining at the time of early NCCP/MSAA/HCP termination will be used exclusively for the benefit of the Habitat Reserve as it exists at the time of termination. More directly, any unallocated and unexpended HRMP funds will be distributed, in trust, to the Reserve Manager(s) to establish a non-wasting endowment for use and application in promoting the purposes of conservation and adaptive management upon the individual Habitat Reserve lands. Any and all funds received by the Reserve Manager(s) following early termination of the NCCP/MSAA/HCP will be duly managed and maintained in accordance with this precept.

In the absence of one or more Reserve Manager(s) to receive the unexpended HRMP funds at the time of program termination, the remaining HRMP funds shall be distributed to a duly qualified 501(c)(3) organization (A) dedicated to the long-term preservation and management of open space areas and resources, (B) possessing demonstrated experience in monitoring and managing open space areas and resources in a manner consistent with (or similar to) the provisions of the HRMP and (C) committed to using the unexpended HRMP funds to establish a non-wasting endowment solely for the long-term protection and management of the Habitat Reserve lands. In the event that no suitable or willing 501(c)(3) organization can be found, the unexpended HRMP funds may be deposited into a non-wasting endowment with the California Department of Fish & Game.

SECTION 12.5 COSTS AND FUNDING FOR MITIGATION OBLIGATIONS

In addition to funding the HRMP program as described above, the participating landowners have certain mitigation obligations for impacts resulting from covered activities. The anticipated costs (if known) of these obligations and funding sources to address these costs, are described below.

12.5.1 County of Orange

As described in this NCCP/MSAA/HCP, the County will perform certain restoration actions within the Prima Deshecha Supplemental Open Space (SOS) as mitigation for impacts relating to the operation of the Prima Deshecha Landfill and improvement to and extension of Avenida La Pata. The restoration actions that the County will implement include the restoration of approximately 171 acres of coastal sage scrub, 18 acres of native grassland and restoration of willow riparian habitat on a 1:1 basis for acres impacted (estimated at approximately six acres). The anticipated restoration activities include the following: site preparation (including mechanized clearing and weed grow and kill), installation of erosion control measures, biological monitoring and documentation, container planting and hydroseeding and long term maintenance. Total cost for these actions is anticipated to be approximately \$12,927,500. In the event that any restored area is subsequently disturbed by landfill-related operations, County will re-restore the areas as set forth in this NCCP/MSAA/HCP.

In addition to restoring the habitats noted above, the County will continue to manage these habitats for the benefit of Covered Species. Long-term management will include such items as continued monitoring for weed species and, as necessary, remediation actions to address any identified problem. Long-term management costs are included in IWMD's annual and long-term operational costs.

Funding for the restoration, monitoring and management of the Prima Deshecha Landfill SOS will be provided through line item budgeting in the County of Orange IWMD annual budget and 15-year financial plan during the active life of the Prima Deshecha Landfill and designated within the mandated landfill 30-year post-closure maintenance fund through the term of this Agreement (see Title 27, California Code of Regulations).

12.5.2 Rancho Mission Viejo

Rancho Mission Viejo mitigation obligations include the restoration of riparian habitats to mitigate for the impacts to ACOE and CDFG jurisdiction, translocation of sensitive plants species as described in *Part II, Chapter 4* and *Appendix I*, and implementation of the avoidance, minimization measures set forth in *Appendix U*. RMV is also responsible for implementing the Water Quality Management Plan. Costs for implementation of these mitigation measures are not available at this time. All costs related to mitigation measures will be funded by RMV through its annual operating budget.

12.5.3 Santa Margarita Water District

SMWD's obligations regarding avoidance, minimization and mitigation are set forth in *Appendix U*. Costs for implementation of these measures are not available at this time as the exact timing for maintenance of existing facilities is undetermined. Costs for implementation of these measures will be funded through SMWD's annual operating budget.

SECTION 12.6 COSTS AND FUNDING FOR RMV ONGOING MANAGEMENT MEASURES (INTERIM MANAGEMENT PLAN)

Part I, Chapter 11 and *Appendix X* describe the ongoing management measures that make up the Interim Management Plan including invasive species control and grazing management practices set forth in the GMP. *Appendix X* describes that the costs for invasive species control can run up to \$100,000 per year for RMV lands, approximately \$72,000 per year for the Ladera Open Space and up to \$25,000 on the TRW (Northrop Grumman) lease area. Funding for the RMV costs are provided through RMV's annual operating budget. Funding for the Ladera Open Space costs are provided through DMB Ladera's annual operating budget. The lease operator pays for the TRW invasive species control program through its annual operating budget. No costs are available for the GMP, but it is funded through RMV.